IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Con.Case(C).No. 227 of 2007(S)

NON-COMPLIANCE OF THE JUDGMENT IN W.A.NO.3370/2000 JUDGMENT DATED 30.6.2006 IN CCC.NO.1133/2004 AND ORDER DATED 1.8.2006 IN RP.571/2006 OF THIS COURT.

PETITIONER: APPELLANT:

M/S. GENERAL METALS,
INDUSTRIAL ESTATE P.O.,
TRIVANDRUM-695 019,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI.K.M.IGNATIUS.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENT: RESPONDENT:

T.M. MANOHARAN,
S/O.T.U.MAKKUNNI,
AGED ABOUT 54 YEARS,
CHAIRMAN,
KERALA STATE ELECTRICITY BOARD,
VYDHYUTHI BHAVANAM
, PATTOM,
THIRUVANANTHAPURAM.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.K.S.ANIL

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

Contempt Case (Civil) NO.227 of 2007

Dated this the 24th September,2007

JUDGMENT

H.L.DATTU, C.J.

The complainant before us was the petitioner in O.P.No.4969 of 2000. The complainant alleges that the respondent/contemnor has wilfully and deliberately disobeyed the orders and directions issued by this Court. Therefore, requests this Court to initiate appropriate proceedings as provided under the provisions of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India.

2. The respondent is served and has entered appearance through the Senior Counsel Sri.N.N.Sugunapalan and has filed a counter affidavit.

3. The petitioner was before this Court in O.P.No.4969 of 2000, inter alia, seeking certain directions to the respondent. This Court by its judgment dated 11th October, 2000, had disposed of the Original Petition and in that, was pleased to issue the following directions:

> ".. I direct the respondent to pass fresh order, calculate interest as per the Act for delayed payment made for goods supplied after the Act came into force and effect payment expeditiously, in any event, within three weeks from the date of production of a copy of this judgment."

4. Aggrieved by the aforesaid order passed by the learned single Judge, the writ petitioner and the respondent in the Original Petition had filed appeals before this Court in W.A.Nos.3370 of 2000 and 3297 of 2000.

The appeals came to be disposed of by this Court by its judgment dated 29th July, 2003. In that, the Court was pleased to issue the following directions:

> " The supplier is entitled to interest only in respect of the supplies made after the enforcement of the Act. Accordingly, both the appeals are dismissed."

5. After disposal of the Original Petition and the Writ Appeals, the respondent has passed an order dated 21st December, 2004. In that, according to them, they are liable to pay interest of Rs.8,70,232/- to the complainant. In the order, it is further stated that the petitioner is due to the respondent for a sum of Rs.41,09,883/-.

6. The relevant portions of the order passed by the Board, dated 21st December, 2004, read as under:

> ".. Hence the interest on delayed payment is calculated as per the provision of the Act 1993 as under:
>
> (a) Section 1(3); The Act has come into force with effect from 23.09.92 and hence any delay caused after the enforcement of Act is entitled for interest payment, till the date of payment of the amount due for the supply made and accepted by the Board.
>
> (b) Section 2(b): "appointed day", means the day following immediately after the expiry of the period of 30 days from the "day of acceptance". For the purpose of this clause "day of acceptance" means the day of complete verification and acceptance of the materials by the Board.
>
> (c) Liability of K.S.E.Board is to make payment for the supplies made on or before the 30th day from the "day of acceptance".
>
> (d) Date from which and rate at which interest is payable:- K.S.E.Board is liable to pay interest to M/s.General

Metals on that amount due for the supplies made from the appointed day as defined above at such rate which is five percent points above the floor rate for comparable lending.

(e) Liability of buyer to pay compound interest:- K.S.E.Board shall be liable to pay compound interest (with monthly interest) at the rate mentioned above only on the "amount due to the firm" for the supplies made and accepted by Board. The "amount due to the firm" means the invoiced amount for the supplies made. After payment of each invoice, the amount due ceases to exist and the firm is entitled only for the interest compounded monthly for the delayed payment till the date of payment of invoice.

....

10. The amount due as interest on delayed payment to M/s.General Metals Limited is Rs.8,70,232/- (Rupees Eight lakhs seventy thousand two hundred thirty two only).

11. The matter was examined in detail in the Purchase Committee meeting and it was decided that no amount is payable in cash to M/s.General Metals, Industrial Estate (P.O.), Pappanamcode, Thiruvananthapuram, but in turn an amount of Rs.41,09,883/- (Rupees Forty one lakhs nine thousand eight hundred eighty three only) is due to Board. The final settlement of claims due to the Board (with interest) shall be intimated in due course."

7. The petitioner, aggrieved by the aforesaid order passed and further being of the opinion that the respondent has wilfully disobeyed the orders and directions issued by this Court, had filed a Contempt Petition before this Court in No.1133 of 2004. This court by its judgment dated 30th June, 2006, was pleased to close the contempt proceedings by recording the statement made by the learned counsel appearing for the contemnor/respondent. The order passed by this Court, dated 30th June, 2006, reads as under:

> "Learned counsel for the respondent states that the amount due to the petitioner will be made over within three weeks from today. The statement stands recorded and in view thereof the present contempt matter is closed."

8. After disposal of the contempt proceedings, Review Petition No.571 of 2006 was filed by the respondent. This Court, by its order dated 1st August, 2006, was pleased to reject the Review Petition. The order passed by this Court, dated 1st August, 2006, is as under:

> "The order sought to be reviewed in this petition was passed in view of the statement made by the counsel for the respondent himself. No merits. Dismissed."

9. Aggrieved by the order so passed, the respondent had carried the matter by way of Special Leave Petition before the Apex Court in Civil Appeal No.7986 of 2006. The Apex Court by its order dated 3rd November, 2006, was pleased to reject the Special Leave Petition. The order passed by the Apex Court is as under:

> "Delay condoned.
>
> We see no reason to interfere with the impugned order. The special leave petition is dismissed.
>
> However, the Board is given four weeks time to make the payment."

10. After the disposal of the Special Leave Petition, it appears, the respondent had paid a sum of Rs.8,70,232/- to the petitioner/complainant.

11. The petitioner has now filed the present Contempt Petition, inter alia, questioning the calculation of interest on delayed payment made by the respondent. According to the complainant, the respondent has not followed

the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 ("Act, 1993" for short) while calculating the interest payable by them and therefore, there is wilful and deliberate disobedience of the orders and directions issued by this Court.

12. Sri.Jayasankar, learned counsel appearing for the complainant, reiterates the assertion made by the complainant in the petition and, according to him, the whole calculation done by the respondent is in order to defeat the claim of the petitioner/complainant.

13. Sri.N.N.Sugunapalan, learned Senior Counsel appearing for the respondent/contemnor, would submit that the order that is passed by the respondent, dated 21st December, 2004, is after obtaining appropriate instructions not only from the Accounts Officer of the Board but also from the Chartered Accountant and, therefore, would submit whatever calculations they have done is in accordance with the provisions of the Act 1993 and, therefore, there is no wilful and deliberate disobedience of the orders and directions issued by this Court.

14. Section 2(b) of the Contempt of Courts Act, 1971 defines the meaning of the expression "civil contempt". It means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.

15. The action under the provisions of the Contempt of Courts Act, 1971 can be taken against the contemnor/respondent only if there is wilful and

deliberate disobedience of the orders and directions issued by this Court.

16. In the present case, this Court, while disposing of the Original Petition as well as the Writ Appeals, had directed the respondent to calculate interest as per the Act on the delayed payments made for the goods supplied after the Act came into force and effect payment expeditiously.

17. After the disposal of the Original Petition and the Writ Appeals, the respondent has made calculations and has passed the order dated 21st December, 2004. According to them, their liability to pay compound interest starts from a particular day. This is their understanding of the provisions of Sections 3 and 4 of the Act, 1993.

18. Section 4 of the Act, 1993 did not come up for consideration by the Courts including the Apex Court. The respondent, with the help of the Accounts Officer of the Board and the Chartered Accountant, is of the opinion that they are liable to pay compound interest of Rs.8,70,232/- only to the petitioner. In our opinion, these are all matters which require an agitation by the petitioner before an appropriate forum. In that view of the matter, we are of the opinion that there is neither wilful nor deliberate disobedience of the orders and directions issued by this Court. Therefore, cognizance of this contempt petition cannot be taken by us. Therefore, the following:

O R D E R

i) The Contempt Petition is closed.

ii) However, liberty is reserved to the complainant/petitioner, if they

so desire, to question the correctness or otherwise of the orders passed by the respondent/contemnor, dated 21st December, 2004 before an appropriate forum.

iii) All the contentions of both the parties are left open.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/